



9110-04-P

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 117**

**[Docket No. USCG-2018-0131]**

**RIN 1625-AA09**

**Drawbridge Operation Regulation; Youngs Bay and Lewis and Clark River,  
Astoria, OR**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

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**SUMMARY:** The Coast Guard proposes to amend the operating schedule that governs three bridges in Astoria, OR: the US101 New Youngs Bay highway bridge (New Youngs Bay Bridge), mile 0.7 crossing Youngs Bay; the Oregon State Old Youngs Bay highway bridge (Old Youngs Bay Bridge), mile 2.4, crossing Youngs Bay; and the Oregon State Lewis and Clark River highway bridge (Lewis and Clark River Bridge), mile 1.0, crossing the Lewis and Clark River. This NPRM will allow the bridge to open during weekend hours after receiving a 2 hour advance notice. The proposed modification will remove the draw tender during weekend hours due to minimal usage.

**DATES:** Comments and related material must reach the Coast Guard on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** You may submit comments identified by docket number USCG-2018-0131 using Federal eRulemaking Portal at <http://www.regulations.gov>.

See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call or e-mail Steven M. Fischer, Bridge Administrator, Thirteenth Coast Guard District Bridge Program Office, telephone 206-220-7282; e-mail [d13-pf-d13bridges@uscg.mil](mailto:d13-pf-d13bridges@uscg.mil).

## **SUPPLEMENTARY INFORMATION:**

### **I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<i>Federal Register</i>
NPRM	Notice of proposed rulemaking
ODOT	Oregon Department of Transportation
§	Section
U.S.C.	United States Code

### **II. Background, Purpose and Legal Basis**

The Coast Guard proposes revising the rule that governs three bridges at Astoria, OR, the New Youngs Bay Bridge, the Old Youngs Bay Bridge and the Lewis and Clark River Bridge. Due to infrequent drawbridge opening requests from Friday evenings through Monday early mornings, we propose opening the three highway bridges within Youngs Bay and Lewis and Clark River with a two-hour advance notice. The New Youngs Bay Bridge over five years had the most openings of 77 requests. We published a test deviation for six months in the

Federal Register (83 FR 9430) on March 6, 2018, to collect data and comments for this proposed rule titled Drawbridge Operation Regulation; Youngs Bay and Lewis and Clark River. Only one comment was received, and that comment was not related to the schedule change for the test deviation. We did not receive any delay of opening complaints for the three subject bridges during the test deviation. The three bridges are operated by the Lewis and Clark River Bridge tender of the Oregon Department of Transportation (ODOT). Youngs Bay provides no alternate route to pass around the three subject bridges. The New Youngs Bay Bridge provides 39 feet of vertical clearance at mean high water, the Old Youngs Bay Bridge provides 24 feet of vertical clearance at mean high water, and the Lewis and Clark River Bridge provides 25 feet of vertical clearance at mean high water. The three subject bridges operate per 33 CFR 117.899 to open on signal if at least one half-hour notice is given to the draw tender at the Lewis and Clark River Bridge from 7 a.m. to 5 p.m. Monday through Friday, and from 8 a.m. to 4 p.m. on Saturday and Sunday. This proposed rule will allow the three subject bridges to open from Friday at 5 p.m. to Monday at 7 a.m. if at least a two-hour notice is given by telephone to the draw tender at the Lewis and Clark River Bridge. The purpose of this rulemaking is in regards to a request from ODOT to remove the bridge operator to reduce operating cost. The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1231.

### **III. Discussion of Proposed Rule**

This proposed rule amends 33 CFR 117.899 to provide specific requirements for the operation of the New Youngs Bay Bridge, the Old Youngs

Bay Bridge and the Lewis and Clark River Bridge. These specific requirements are in addition to or vary from the general requirements that apply to all drawbridges across the navigable waters of the United States. This proposed rule reasonably accommodates waterway users while reducing ODOT's burden in operating the bridges. We have not identified any impacts on marine navigation with this proposed rule.

#### **IV. Regulatory Analyses**

We developed this proposed rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analysis based on these statutes and Executive Orders, and we discuss First Amendment rights of protestors.

##### **A. Regulatory Planning and Review**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance, it is exempt from the requirements of Executive Order 13771. This regulatory action determination is based on the ability for the bridges to open on signal after receiving at least a two hour notice by telephone from Friday at 5 p.m. to Monday

at 7 a.m. This proposed rule also applies to opening the three subject bridges for marine vessels needing an opening due to an emergency.

**B. Impact on Small Entities**

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit under the subject bridges may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator. Vessels operating on Youngs Bay and the Lewis and Clark River range from small recreational vessels, sailboats, tribal fishing boats and small commercial fishing vessels. Vessels able to pass through the subject bridges with the draw in the closed-to-navigation position may do so at any time.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

D. Federalism and Indian Tribal Government

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the

distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule will not result in such expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This proposed rule simply promulgates the operating regulations or procedures for drawbridges. Normally such actions are categorically excluded from further review, under figure 2-1, paragraph (32) (e), of the Instruction.

A preliminary Record of Environmental Consideration and a Memorandum for the Record are not required for this proposed rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

### V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal



information you have provided. For more about privacy and the docket, visit <http://www.regulations.gov/privacynotice>.

Documents mentioned in this NPRM as being available in this docket and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

### **List of Subjects in 33 CFR Part 117**

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

#### **PART 117—DRAWBRIDGE OPERATION REGULATIONS**

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

2. Amend § 117.899 by revising paragraphs (a), (b) and (c) to read as follows:

#### **§ 117.899 Youngs Bay and Lewis and Clark River.**

(a) The draw of the US101 New Youngs Bay highway bridge, mile 0.7, across Youngs Bay at Smith Point, shall open on signal for the passage of vessels if at least one half-hour notice is given to the draw tender at the Lewis and Clark River Bridge by marine radio, telephone, or other suitable means from 7 a.m. to 5 p.m. Monday through Friday. During all other times, including weekends from 5

p.m. on Friday until 7 a.m. on Monday, and all Federal holidays but Columbus Day, the draw shall open on signal if at least a two-hour notice is given to the draw tender by telephone. The opening signal shall be two prolonged blasts followed by one short blast.

(b) The draw of the Oregon State Old Youngs Bay highway bridge, mile 2.4, across Youngs Bay foot of Fifth Street, shall open on signal for the passage of vessels if at least one half-hour notice is given to the draw tender at the Lewis and Clark River Bridge by marine radio, telephone, or other suitable means from 7 a.m. to 5 p.m. Monday through Friday. During all other times, including weekends from 5 p.m. on Friday until 7 a.m. on Monday and Federal holidays with the exception of Columbus Day, the draw shall open on signal if at least a two-hour notice is given to the draw tender by telephone. The opening signal shall be two prolonged blasts followed by one short blast.

(c) The draw of the Oregon State Lewis and Clark River highway bridge, mile 1.0, across the Lewis and Clark River, shall open on signal for the passage of vessels if at least one half-hour notice is given by marine radio, telephone, or other suitable means from 7 a.m. to 5 p.m. Monday through Friday. During all other times, including weekends from 5 p.m. on Friday until 7 a.m. on Monday and Federal holidays but Columbus Day, the draw shall open on signal if at least a two-hour notice is given to the draw tender by telephone. The opening signal shall be two prolonged blasts followed by one short blast.

**DAVID G. THROOP,**

*Rear Admiral, U.S. Coast Guard,*

*Commander, Thirteenth Coast Guard District.*

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